

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

KIRK JOHNSTON,

Plaintiff,

v.

CHAD KROEGER, MICHAEL KROEGER,
RYAN PEAKE, DANIEL ADAIR, WARNER
MUSIC GROUP, ATLANTIC RECORDING
CORP., ROADRUNNER RECORDS, INC.,
WARNER/CHAPPELL MUSIC, INC., AND
LIVE NATION ENTERTAINMENT, INC.,

Defendants.

NO. 20-CV-00497-RP

**DECLARATION OF JAMES BERKLEY IN SUPPORT OF DEFENDANTS CHAD
KROEGER, MICHAEL KROEGER, RYAN PEAKE, DANIEL ADAIR, ROADRUNNER
RECORDS, INC. AND WARNER CHAPPELL MUSIC, INC'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO FRCP 12(B)(6)**

I, JAMES BERKLEY, DECLARE:

1. I am employed as a Senior Research Analyst at Mitchell Silberberg & Knupp LLP ("MSK"), counsel for Defendants Chad Kroeger, Michael Kroeger, Ryan Peake, Daniel Adair (collectively "Nickelback") Roadrunner Records, Inc. and Warner Chappell Music, Inc. (erroneously sued as Warner/Chappell Music, Inc.) (collectively, "Defendants") in this matter.

Unless otherwise noted, I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto under oath.

2. Attached to Defendants' Motion to Dismiss as **Exhibit 1** is an MP3 sound recording of Plaintiff Kirk Johnston's alleged musical composition *Rock Star*, performed by the band Snowblind Revival, which I purchased from Amazon Music via the web page at the Uniform Resource Locator ("URL") <https://www.amazon.com/gp/product/B07HXVVPPG/> and downloaded from the Amazon.com website on or about October 19, 2020, and which has been

placed on a flash drive by an MSK employee working at my direction. For purposes of identification, the name “Snowblind Revival” and case information for this action have been appended to the original file name.

3. Attached to Defendants’ Motion to Dismiss as **Exhibit 2** is an MP3 sound recording of Nickelback’s musical composition *Rockstar*, performed by Nickelback, which I purchased from Amazon Music via the web page at the URL <https://www.amazon.com/Rockstar-Explicit/dp/B0011Z0YR2/> and downloaded from the Amazon.com website on or about October 19, 2020, and which has been placed on a flash drive by an MSK employee at my direction.¹ For purposes of identification, the name “Nickelback” and case information for this action have been appended to the original file name.

4. Attached to Defendants’ Motion to Dismiss as **Exhibit 3** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the song *So you want to be a rock ‘n’ roll star*, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

5. Attached to Defendants’ Motion to Dismiss as **Exhibit 4** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the musical composition *Rock ‘n’ roll singer* by AC/DC, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

6. Attached to Defendants’ Motion to Dismiss as **Exhibit 5** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office pertaining to the musical composition *Rock n’ Roll band* by Boston, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

¹ The flash drive containing Exhibits 1 and 2 is being sent to the Court via FedEx.

7. Attached to Defendants' Motion to Dismiss as **Exhibit 6** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the musical composition *Wanna be a rock 'n' roll star* by Eddie Money, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

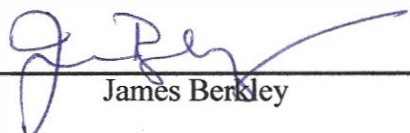
8. Attached to Defendants' Motion to Dismiss as **Exhibit 7** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the musical composition *Rock 'n' roll star* by REO Speedwagon, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

9. Attached to Defendants' Motion to Dismiss as **Exhibit 8** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the musical composition *Rock 'n' roll to the rescue* by The Beach Boys, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

10. Attached to Defendants' Motion to Dismiss as **Exhibit 9** is a true and correct printout of an entry from the Copyright Public Catalog of the United States Copyright Office for the musical composition *Rock Star* by Everclear, which I obtained via the URL <https://cocatalog.loc.gov/> on or about October 16, 2020.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st day of October, 2020, at Los Angeles, California.


James Berkley